



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

January 19, 2006

The Honorable David P. Currier, Chairman
Resources, Recreation, and Development Committee
Room 305, LOB
Concord, NH 03301

RE: House Bill 1317, relative to the eradication of exotic aquatic weeds

Dear Representative Currier:

Thank you for the opportunity to comment on HB 1317 which would change the current statute, RSA 487:17, II, related to control of exotic weeds in New Hampshire's surface waters. Specifically, this legislation would eliminate certain conditions for exotic weed control projects pertaining to the size and longevity of an infestation and would eliminate the need for the department to comply with current statute and rules pertaining to pesticide applications when controlling milfoil or other exotic weeds in our lakes and rivers. The Department of Environmental Services (DES) supports the language changes relative to the size and longevity of infestations but has concerns and suggestions regarding the exemption of DES from compliance with current pesticide laws in order to facilitate exotic aquatic weed control. We also recommend that a fiscal note is needed for the bill, as further explained below.

Effective control of exotic aquatic weeds, such as milfoil, in New Hampshire's surface waters is of great importance to our economy as well as to the recreational use and ecological integrity of our lakes. DES has worked diligently for over a decade with numerous lake associations, the legislature, and others to prevent, identify and control infestations. We have been actively involved in pursuing and participating in research to identify how best to control or eradicate exotics. We have also participated in a Pesticide Control Board effort to improve the permitting process for exotic aquatic weed control and, more recently, have participated in the legislative committee established by RSA 487:30,31 Laws of 2004 and 2005 that was established to study exotic aquatic weeds and species. NHDES has a clear understanding of the unique challenge of controlling milfoil and other exotics while also protecting human health and the environment and complying with all applicable federal regulations. Based on this knowledge and experience we offer the following information concerning the regulation of pesticide usage for exotic aquatic weed control.

The Department of Agriculture, Food and Markets (DAFM) is the lead state agency regulating the sale and use of pesticides in New Hampshire. The DAFM's Pesticide Control Division operates under direction of a 13 member Pesticide Control Board and is responsible for issuance of permits to apply pesticides, including permits for pesticide applications to control exotic aquatic weeds. The DAFM has Primacy from USEPA for oversight of pesticide use and sale in NH. DAFM issues permits to ensure compliance with federal and state requirements and in consultation with the DES, the Department of Health and Human Services and the Department of Fish and Game. A special permit is required for application of pesticides in all public waters to ensure compliance with 1) the use requirements that are listed on the label of all regulated pesticides and 2) all other Federal and State regulations that are in place to protect human health and the environment.

It is our understanding that one intent of HB 1317 is to exempt pesticide usage for the control of exotic aquatic weeds from the current regulatory process described above and to give DES sole regulatory authority

for this usage in order to facilitate the appropriate use of pesticides in managing infestations. Please consider the following in determining the need for this part of the proposed legislation:

- Whoever regulates the use of pesticides for the control of exotic aquatic weeds will need to ensure that the conditions of Primacy are met and that all Federal laws are complied with. Primacy allows regulation at the state level rather than direct implementation by USEPA. State implementation provides a great deal more flexibility and efficiency than would otherwise be the case. Maintaining Primacy is done through demonstration that there are sufficient laws and programs to ensure that the requirements on the label of any pesticide used are being adhered to and that human health and the environment are being protected. No matter which state agency has authority over the use of pesticides for exotic aquatic weed control, compliance with primacy conditions, label restrictions, the Federal Insecticide, Fungicide and Rodenticide Act and the Clean Water Act will be necessary.
- Over the last five years there have typically been 20-25 special permits issued each year. If DES were to take over this permitting/use responsibility from DAFM, funding would be needed for additional staff to review applications, coordinate with sister agencies, communicate decisions and conditions, monitor pesticide usage, and enforce regulations. We recommend that a fiscal note be prepared.
- DES believes continued coordination with sister agencies is necessary to ensure that all interests are considered and that human health and the environment are adequately protected. Many of the conditions now imposed on applicants are the result of the close coordination of these agencies. For instance, 1) the swimming restriction on 2,4-D is based on a DHHS risk assessment, 2) the Fish and Game Department has a policy that advises against the use of pesticides in water bodies (see attached) and is actively working with DES and DAFM towards development of comprehensive management plans such as the approach piloted at Suncook Lake, and 3) DES has concerns related to compliance with the Federal Clean Water Act and the protection of sources of drinking water that result in monitoring requirements on permits. Coordinated decision making with sister agencies on the use of pesticides to control aquatic exotic weeds should continue.
- Improving the current permitting process to facilitate the control of exotic aquatic weeds while also protecting public health and the environment is a worthy goal. DES supports identifying specific concerns and working with all stakeholders to streamline the process. In 1998, concerns were brought to the Pesticide Control Board concerning the permitting process for and requirements associated with pesticide use for milfoil control. A committee was formed with representation from all stakeholders. This committee met nine times and a number of changes were recommended and implemented. The final report of recommendations is attached. DES believes this was a balanced and productive process for improving the permitting process and a similar process could be used again to address any concerns. It is our understanding that since 2000, the NH Pesticide Control Board has not been informed of problems with special permits for aquatic weed control.

In summary, DES supports changing current statute to allow more flexibility of treatment by removing conditions based on the size or longevity of an infestation. We also believe that efforts to improve the current permitting process for pesticide use to control exotic aquatic weeds is worthwhile. The first step towards improvement may be to convene a balanced stakeholder committee to consider specific issues and recommend changes that lead to elimination of unwarranted requirements. DES would be happy to lead this effort given our great desire to successfully balance exotic aquatic weed control with protection of human health and the environment.

The Honorable David P. Currier, Chairman

January 19, 2006

Thank you again for the opportunity to comment on this legislation. If you have any questions or need additional information, please do not hesitate to call Sarah Pillsbury at 271-1168 or me at 271-3449.

Sincerely,



Michael P. Nolin
Commissioner

cc: Representative Drisko
Representative R. Cooney
Representative Whalley
Representative Russell
Representative J. Allen
Senator D'Allesandro
Senator Clegg
Harry T. Stewart, DES Water Division Director
Sarah Pillsbury, DES